

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:

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Telephone Number:

Refer Reply To:

CC:PSI:04

PLR-124092-07

Date: JUNE 09, 2008

In Re:

Legend:

Decedent =

Date 1 =

Spouse =

Daughter 1 =

Daughter 2 =

Daughter 3 =

Daughter 4 =

Stepchild 1 =

Stepchild 2 =

Grandchild 1 =

Grandchild 2 =

Grandchild 3 =

Grandchild 4 =

Grandchild 5 =

Grandchild 6 =

Grandchild 7 =

Grandchild 8 =

Grandchild 9 =

Grandchild 10 =

Will =

a =

Account =

County =

X =

Individual 1 =

Bank =

Court =

Petition =

Individual 2 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

State =

State Statute 1 =

State Statute 2 =

State Statute 3 =

State Statute 4 =

Date 6 =

Law Firm =

Date 7 =

Date 8 =

Order =

Dear _____ :

This is in response to your letter dated May 11, 2007, and subsequent submissions, in which you request rulings regarding federal gift and estate tax consequences of proposed disclaimers.

Facts

The facts submitted and representations made are as follows:

Decedent died on Date 1, survived by the following family members: Spouse; Decedent's four adult daughters, Daughter 1, Daughter 2, Daughter 3, and Daughter 4; Decedent's stepchildren, Stepchild 1 and Stepchild 2; and Decedent's grandchildren Grandchild 1, Grandchild 2, Grandchild 3, Grandchild 4, Grandchild 5, Grandchild 6, and Grandchild 7, Grandchild 8, Grandchild 9, and Grandchild 10.

Decedent's Will provides for the payment from Account of costs, expenses, debts, and taxes and for \$a in cash to each of Daughters 1, 2, 3, and 4 and Stepchildren 1 and 2. Will further provides that any cash remaining in Account will be paid to Spouse. All of Decedent's real and personal property in County pass to Daughters 1, 2, 3, and 4.

Article Seventh of Will provides for the establishment of a Trust to be funded with all of the stocks and bonds in Account at Decedent's death. Trust is to be divided into equal shares; one share to be held for the benefit of each of Decedent's Grandchildren living at her death. Trust provides that the trustee will distribute specified portions of each Grandchild's share of principal and income when the Grandchild reaches ages 25 and 30 and the remaining portion when the Grandchild reaches age 35. Article Sixth names Bank as trustee.

Under Article Eighth, Decedent's residuary estate passes to Spouse (Residuary Clause). Under Article Ninth, if Spouse predeceases Decedent or dies simultaneously, \$x of Decedent's residuary estate passes to each of Stepchildren 1 and 2; the remaining residuary estate will be divided equally among any of Stepchildren 1 and 2 and Daughters 1, 2, 3, and 4 living at Decedent's death. Will contains no provisions regarding the consequences if any beneficiary disclaims an interest provided under Will.

Individual 1 was named as, and is currently serving as, Personal Representative under Will.

From Date 2 to Date 3, in response to a request from Personal Representative, Court issued orders appointing Individual 2 as Guardian ad Litem for Grandchild 1, Grandchild 2, Grandchild 3, Grandchild 4, Grandchild 5, Grandchild 6, and Grandchild 7 (referred to herein as Minor Grandchildren). On Date 3, Court also issued orders appointing each of Daughters 1, 2, 3, and 4 to be the conservator of the estates of her respective children among the Minor Grandchildren and of any of her unborn children.

On Date 4, Daughters 1, 2, 3, and 4, as conservators of their respective minor children who are Minor Grandchildren, filed a petition with Court. The petition states that each Daughter proposes to execute a disclaimer on behalf of each of her respective wards. The petition further states that each of the proposed disclaimers made by a Daughter, as conservator, on behalf of each Minor Grandchild who is her ward, will relate back to the date of Decedent's death and will disclaim a fraction of the Minor Grandchild's beneficial interest in the grandchild's separate share of Trust. The numerator will be the amount equal to the value of the share of Trust held for the benefit of the Grandchild as finally determined for federal estate tax purposes reduced by one-tenth of Decedent's generation-skipping transfer (GST) tax exemption available on her date of death. The denominator will be the value of the grandchild's share of Trust as finally determined for federal estate tax purposes. A copy of a proposed disclaimer was attached to the petition. This copy states that the daughter as conservator, in addition

to disclaiming the respective Minor Grandchild's fractional interest in Trust, also disclaims any and all rights and interests in the disclaimed interest which might constitute a gift, bequest or devise to her as conservator. The petition states that each proposed disclaimer will be irrevocable, in writing, will be delivered to Bank within nine months of the later of Decedent's death or the date on which each disclaiming Minor Grandchild reaches age 21, and that none of the Minor Grandchildren have accepted any benefits from the disclaimed property. Further, the petition provides reasons why the proposed disclaimers are in the best interests of the Minor Grandchildren. It has been represented that Grandchild 8, Grandchild 9, and Grandchild 10 will also disclaim their interests in Trust in a manner consistent with the formula described above. They are not part of this ruling request.

The petition requests an order that, conditioned and effective upon the receipt of a favorable letter ruling from the Internal Revenue Service, the proposed disclaimers are valid under State law and that the disclaimed interests will pass to Spouse under the Residuary Clause of Will.

State Statute 1 provides that a disclaimed interest passes under the residuary clause of the transferor's will if the transferor died prior to the disclaimer. Under State Statute 2, to qualify as a disclaimer, a refusal to accept an interest in property must be written, irrevocable, and unqualified; must be received by the legal representative of the transferor or the holder of legal title to the property within 9 months after the later of the day on which the transfer creating the interest in the disclaimant is made or the day on which the disclaimant reaches age 21; the disclaimant must not have accepted the interest or any of its benefits; and as a result of the refusal, the disclaimed interest passes without any direction by the disclaimant either to the spouse of the decedent or to a person other than the disclaimant. State Statute 3 provides that a duly appointed, qualified and acting guardian of the property of a person under the age of 21 years may make a disclaimer on behalf of his ward, upon a showing satisfactory to the court having jurisdiction over the guardianship that the disclaimer is in the best interests of the ward. A guardian of the property may be appointed by the court for the sole purpose of filing with the court an application for approval of a disclaimer. State Statute 4 defines a conservator as a person appointed by the court to have the custody and control of the property of a ward.

On Date 5, Court held a hearing on the conservators' petition. On Date 6, the conservators filed a motion with Court asking that Personal Representative be authorized to engage Law Firm as tax counsel on behalf of Decedent's estate and on behalf of the conservators who would be making the disclaimers. Subsequently, the motion was approved.

On Date 7, the guardian ad litem filed a Recommendation to Court that the conservators execute disclaimers on behalf of the Minor Grandchildren. The Recommendation was conditioned on the following: (a) that there be no disclaimer of

the aggregate amount of Decedent's available GST exemption; (b) that the Internal Revenue Service issues a ruling that the disclaimers are qualified disclaimers under § 2518 of the Internal Revenue Code and that all disclaimed property passing to Spouse qualifies for the federal estate tax marital deduction under § 2056(a); and (c) that Court issues an order determining that the disclaimers are in the best interests of the grandchildren and that all of the disclaimed interests of the Grandchildren will pass to Spouse under the Residuary Clause.

On Date 8, Court issued an Order that the disclaimers the conservators proposed to execute on behalf of the Minor Grandchildren would be in the best interests of the Minor Grandchildren, conditioned on Personal Representative's receipt of a favorable letter ruling from the Internal Revenue Service.

It is represented that none of the assets of Decedent's estate have been distributed to Trust. It is further represented that Spouse has not offered and will not provide any consideration in exchange for the proposed disclaimers. Spouse represents that there is no agreement, express or implied, that he will distribute the disclaimed assets to the Minor Grandchildren during his lifetime or at his death, nor does he have a set plan to make lifetime gifts of disclaimed assets to the Minor Grandchildren if they execute the proposed disclaimers.

You have requested the following rulings:

1. The proposed disclaimers to be executed on behalf of the Minor Grandchildren will be qualified disclaimers under § 2518 of the Internal Revenue Code.

2. All disclaimed interests passing to Spouse as a result of the proposed disclaimers will qualify for the estate tax marital deduction under § 2056.

Law and Analysis

Ruling Request #1:

Section 2046 provides that disclaimers of property interests passing upon death are treated as provided under § 2518. Section 2518 provides that, if a person makes a qualified disclaimer with respect to any interest in property, the disclaimed interest is treated as if it had never been transferred to the person making the qualified disclaimer for purposes of the federal estate, gift, and generation-skipping transfer tax provisions.

Under § 2518(b), the term "qualified disclaimer" means an irrevocable and unqualified refusal by a person to accept an interest in property, but only if --

1) the refusal is in writing,

2) the writing is received by the transferor of the interest or his legal representative no later than 9 months after the date on which the transfer creating the interest in the person making the disclaimer is made, or the date on which the person making the disclaimer attains age 21,

3) the person making the disclaimer has not accepted the interest or any of its benefits, and

4) as a result of the refusal, the interest passes without any direction on the part of the person making the disclaimer and passes either to the decedent's spouse or to a person other than the person making the disclaimer.

Under § 25.2518-2(d)(1) of the Gift Tax Regulations, a qualified disclaimer of property cannot be made with respect to an interest in property if the disclaimant has accepted the interest or any of its benefits, expressly or impliedly, prior to making the disclaimer. The acceptance of any consideration in return for making a disclaimer is an acceptance of the benefits of the entire interest disclaimed.

Section 25.2518-2(e)(1) provides that a disclaimer is not a qualified disclaimer unless the disclaimed interest passes without any direction on the part of the disclaimant to a person other than the disclaimant (except as provided in § 25.2518-2(e)(2) pertaining to the disclaimer by a surviving spouse). If there is an express or implied agreement that the disclaimed interest in property is to be given or bequeathed to a person specified by the disclaimant, the disclaimant shall be treated as directing the transfer of the property interest. The requirements of a qualified disclaimer under § 2518 are not satisfied if -- (i) The disclaimant, either alone or in conjunction with another, directs the redistribution or transfer of the property or interest in property to another person (or has the power to direct the redistribution or transfer of the property or interest in property to another person unless such power is limited by an ascertainable standard); or (ii) The disclaimed property or interest in property passes to or for the benefit of the disclaimant as a result of the disclaimer (except as provided in § 25.2518-2(e)(2)).

Under § 25.2518-3(a)(2), the disclaimer of an undivided portion of an interest in a trust may be a qualified disclaimer. Under § 25.2518-3(b), a disclaimer of an undivided portion of a separate interest in property which meets the other requirements of a qualified disclaimer under § 2518(b) and the corresponding regulations is a qualified disclaimer. An undivided portion of a disclaimant's separate interest in property must consist of a fraction or percentage of each and every substantial interest or right owned by the disclaimant in such property and must extend over the entire term of the disclaimant's interest in such property and in other property into which such property is converted. A disclaimer of some specific rights while retaining other rights with respect to an interest in the property is not a qualified disclaimer of an undivided portion of the disclaimant's interest in the property. Thus, for example, a disclaimer made by the

devisee of a fee simple interest in Blackacre is not a qualified disclaimer if the disclaimant disclaims a remainder interest in Blackacre but retains a life estate.

To satisfy the requirements of § 2518(b), a disclaimer must be valid under applicable local law. Estate of Dancy v. Commissioner, 872 F.2d 84 (4th Cir. 1989). That is, because state law determines whether a property interest passes from one to another, the disclaimer must constitute an effective renunciation under state law. Estate of Bennett v. Commissioner, 100 T.C. 67 (1993).

Under State law, a duly appointed, qualified and acting conservator of a person under the age of 21 years may make a disclaimer on behalf of his ward, upon a satisfactory showing to the court with jurisdiction over the conservatorship that the disclaimer is in the ward's best interests. The court may appoint a conservator for the sole purpose of filing an application with the court for approval of a disclaimer on behalf of a person under age 21. If the transferor of the disclaimed interest dies before the disclaimer is executed, the disclaimed interest passes under the residuary clause of the transferor's will.

In the present case, the conservators appointed by Court for Minor Grandchildren have obtained Court's approval of the proposed disclaimers, conditioned upon the receipt of a favorable letter ruling from the Internal Revenue Service. Through his or her respective conservator, each Minor Grandchild will disclaim a fractional share of the grandchild's separate share of Trust. Will is silent regarding the effect of a disclaimer by any beneficiary.

It is represented that the disclaimers will be irrevocable, in writing, delivered to Bank as trustee of Trust within nine months of the later of Decedent's death or the date on which each disclaiming Minor Grandchild reaches age 21, and that none of the Minor Grandchildren have accepted any benefits from the disclaimed property. Further, each Minor Grandchild's disclaimer of a fractional interest of Trust will satisfy the requirements of § 25.2518-3(b). However, to be qualified disclaimers for purposes of § 2518, the proposed disclaimers must be valid under applicable local law. In this regard, based on the facts submitted and the representations made, we express no opinion as to whether the proposed disclaimers by Minor Grandchildren will be valid under applicable local law. However, provided the disclaimers are valid under state law, the disclaimers will be qualified disclaimers under § 2518. See Estate of Goree v. Commissioner, T.C. Memo 1994-331.

Ruling Request #2:

Section 2056(a) provides that for purposes of the tax imposed by § 2001, the value of the taxable estate, except as limited by § 2056(b), is determined by deducting from the value of the gross estate an amount equal to the value of any interest in property which passes or has passed from the decedent to the decedent's surviving

spouse, but only to the extent that such interest is included in determining the value of the gross estate.

Section 20.2056(d)-(2)(b) provides that if an interest in property passes from the decedent to a person other than the surviving spouse in a transfer made after December 31, 1976, and the person to whom the property passes makes a qualified disclaimer with respect to the property, and the surviving spouse is entitled to such interest as a result of the disclaimer, then the disclaimed interest is treated as passing directly from the decedent to the surviving spouse.

In the present case, if the proposed disclaimers qualify as disclaimers under State Statute 2, then under State Statute 1, as a result of the disclaimers, the disclaimed property will pass outright to Spouse under the Residuary Clause. Based on the facts submitted and the representations made, we conclude that, provided the proposed disclaimers on behalf of Minor Grandchildren are valid and effective under State law, and are therefore qualified disclaimers for purposes of § 2518, the disclaimed property passing outright to Spouse under the Residuary Clause will be treated for federal estate tax purposes as passing directly from Decedent to Spouse.

Except as specifically ruled herein, we express no opinion on the federal tax consequences of the proposed disclaimers under the cited provisions or under any other provisions of the Code. The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely yours,

James Hogan
Senior Technician Reviewer
Branch 4
Office of Associate Chief Counsel
(Passthroughs and Special
Industries)

Enclosure

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